

1 WILLIAM McPIKE State Bar #95869  
2 2037 W. Bullard Avenue, #353  
3 Fresno, California 97311  
4 Telephone (559) 841-3366  
5 Faxcsimile (559) 841-5343  
6 Email: mcpike@psnw.com  
7 Attorney for the Defendant Steven Hempfling

8 **THE UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10 **FRESNO**

11	UNITED STATES OF AMERICA,	)	CASE NO. 1:05-CV-00594 LJO-SMS
12		)	
13	Plaintiff,	)	DEFENDANT HEMPFLING'S
14		)	RESPONSE TO CONTEMPT
15	v.	)	MOTION; REQUEST FOR ORDER TO
16		)	SHOW CAUSE RE: RULE 11
17	STEVEN HEMPFLING,	)	VIOLATIONS AND REQUEST FOR
18		)	EVIDENTIARY HEARING
19		)	
20		)	Date: June 11, 2008
21		)	Time: 8:30 a.m.
22	Defendant.	)	Request For Telephonic Appearance
23		)	

24 The government frivolously argues that Hempfling has failed and refused to  
25 comply with the Court's order by stating the following:

26 The justification asserted for the defendant's refusal to comply with the  
27 provision of the permanent injunction order that unambiguously required  
28 him to identify his customers and send them a copy of the Court's  
injunction order - that "no such records were ever kept or maintained by  
me" - is inherently unbelievable. Hempfling, who has repeatedly asserted  
throughout this litigation that he and the FES are separate legal entities, is  
engaging in sheer sophistry when he claims that "he," i.e., Steven  
Hempfling, did not maintain records of the customers who purchased  
materials such as the "W4 Alternative Withholding Package" from the FES.

29 Hempfling made no such justification! Hempfling has, in fact, fully complied with  
30 this Court's order. As noted in the declaration of Hempfling being filed concurrently  
31 herewith, neither he, **nor FES**, has ever maintained the names, addresses, social security  
32 numbers, or any other identifying information as to anyone who may have purchased

1 anything from him or FES.

2 Hempfling requests an evidentiary hearing to require the United States to identify  
3 exactly what proof it has that Hempfling “is engaging in sheer sophistry” and that “FES”  
4 or Hempfling has ever kept the identifying information the United States contends exists.  
5 If no such ‘clear and convincing evidence’ is offered, then Hempfling also requests Rule  
6 11 Sanctions against the attorney for the United States. He has sought to hold Hempfling  
7 in contempt based on nothing but absolute conjecture and sheer speculation. Despite the  
8 fact that opposing counsel admits Hempfling made the disclosure to the extent possible,  
9 filed his declaration in compliance with the order, and has offered not one single shred of  
10 evidence to the contrary, he nonetheless seeks a contempt order apparently solely on the  
11 basis that he just doesn’t believe Hempfling’s declaration. Hempfling submits that this  
12 not only does not even come close to meeting the standard for any contempt action, but  
13 the motion is so patently frivolous that the Court should consider imposing sanctions  
14 against opposing counsel under F.R.Civ.P. 11 for wasting everyone’s time.

15 Opposing counsel admits that the party asserting a violation of a court order has  
16 the burden of proving any such alleged violation by ‘clear and convincing evidence’.  
17 (U.S. memorandum, p. 4). Here, the sole ‘evidence’ offered to meet this burden is  
18 counsel’s mere *claim* that Hempfling’s lack of records statement is “inherently  
19 unbelievable”.<sup>1</sup> (Id, p. 5). No authority whatsoever is cited for the proposition that a  
20 party’s mere disbelief about another party’s statements can be ‘evidence’, much less  
21  
22  
23

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24 <sup>1</sup> Hempfling does not understand what is so ‘inherently unbelievable’ about not  
25 collecting names, addresses and social security numbers of any purchasers. If bookstores  
26 demanded this sort of information when people bought books, they’d shortly be out of  
27 business. Moreover, not even the government’s own purchaser of the items, Barbara  
28 Cantrell, contends she supplied any social security number for her purchases. Further,  
opposing counsel has provided no reason whatsoever as to why Hempfling would even  
attempt to collect or maintain any such information.

1 evidence that could support any contempt claim.<sup>2</sup> Nor is any authority cited for the  
2 proposition that a contempt claim can be sustained based on mere suspicion, speculation,  
3 and conjecture. Instead, as recognized by opposing counsel, the standard for contempt is  
4 *clear and convincing evidence*. Although none has been presented here, and no authority  
5 has been cited as to how this situation even comes close to satisfying the heavy burden of  
6 a contempt proceeding, government counsel still filed this motion.

7 Hempfling contends that not only must the motion be denied on its face, but it is so  
8 groundless and frivolous, the Court should seriously consider imposing Rule 11 sanctions.  
9 Although the government and its counsel clearly recognize the evidentiary burden  
10 necessary for a contempt proceeding, it has presented absolutely nothing — no evidence  
11 whatsoever. Yet this facially groundless motion was still filed. By filing the motion,  
12 opposing counsel violated Rule 11(b). Since there are absolutely no evidentiary grounds  
13 for the motion, and no argument presented that the legal contentions are warranted by  
14 existing law or a non-frivolous extension or modification of it, it must have been filed  
15 solely to vex and harass Hempfling, and/or to increase the cost of this litigation. In either  
16 case, Rule 11 applies.

17 This motion is so groundless it has wasted everyone's time, including that of this  
18 Court. Hempfling therefore requests that the Court issue an order to show cause to  
19 opposing counsel, in accordance with Rule 11(c)(1)(B), as to why he has not violated  
20 Rule 11(b). If the Court does not do so, there is no reason not to expect further frivolous  
21 motions from the government and its counsel which will waste still more time and  
22 resources. These types of frivolous proceedings should end now.

### 23 CONCLUSION

24 For the foregoing reasons, the motion must be denied. In addition, the Court  
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26 <sup>2</sup> Nonetheless, in an abundance of caution, Hempfling has filed yet another  
27 declaration which states that, other than the information about Cantrell (which was  
28 supplied by the government itself in the instant case), no such records exist — whether  
they are Hempfling's records or FES records — they simply were not maintained..

1 should issue an order to show cause to government counsel concerning Rule 11  
2 violations.

3  
4 Date: May 23, 2008

5 Respectfully Submitted,

6 /s/William McPike  
7 William McPike, Attorney for Defendant  
8

9 I hereby certify that on 05-23-2008 I electronically filed the foregoing **DEFENDANT**  
10 **HEMPFLING'S RESPONSE TO CONTEMPT MOTION; REQUEST FOR**  
11 **ORDER TO SHOW CAUSE RE: RULE 11 VIOLATIONS** with the Clerk of the  
Court using the CM/ECF system which will send notification of such filing to the  
following:

12 ROBERT D. METCALFE  
13 Trial Attorney, Tax Division  
14 U.S. Department of Justice  
Post Office Box 7238  
Washington, D.C. 20044

15 /s/William McPike  
16 William McPike, Attorney for Defendant  
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